



3/25/2014  
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March 25, 2014

House Natural Resources Committee  
Lansing, Michigan

Re: HB 5400 – 5402 – Use of industrial byproducts

Dear committee members,

The Michigan Environmental Council supports the reuse of industrial by-products when protection of public health can be assured and use of the materials is monitored and tracked in a way that reasonably controls public exposure to materials in the future. It is important to evaluate each use not only at the time it is made, but what we expect will happen over time and whether protections for public health are maintained.

As introduced, the Michigan Environmental Council has the following concerns with the legislation:

**1) The bill allows use of materials that may contaminate drinking water aquifers**

HB 5400 establishes a standard for materials that allows them to leach at 20 times the allowed drinking water standard just four feet above the water table. However, the proponents offer no scientific study that shows that those elevated levels will not result in contamination of drinking water aquifers that may render them unusable. In practice, the determining factor will be the nature of the soil that separates the industrial byproducts from the groundwater. In sandy soil, contaminants will move fairly quickly to lower levels, and soil with greater clay content will significantly slow the process. Michigan has a wide variety of soil types which the bill fails to take into account.

There has been much discussion by the bill proponents of the Wisconsin program which much of the Michigan program is modeled after. In Wisconsin, the allowable leaching standards average 5 to 10 times drinking water standards, significantly reducing the potential for contaminated drinking water aquifers in the future (attachment A).

**2) Failure to notify property owner that low-hazardous materials are being used on their property and systematically track the use industrial by-products**

The bill requires a landowner who has knowledge of the use of industrial byproducts being used on their property to notify subsequent owners (page 47, line 26). However, the bill only requires notification of the owner of property when the owner is a government entity (page 48, line 8). That provision needs to be expanded to include notice to all property owners when industrial byproducts are being used on their property. This notice will allow the owner to notify subsequent owners to ensure that any exposure barrier is properly maintained.

**3) The bill allows the use of fly ash from coal plants which will soon contain significantly higher levels of mercury**

New rules at the state and federal levels require coal plants to remove 90% of the mercury from smokestack emissions starting in 2015. That mercury will mainly be captured in the fly ash. Mercury is a neurotoxin that bioaccumulates in the environment. Michigan currently restricts the consumption of fish from all inland lakes due to excessive levels of mercury. One out of every six women in Michigan already has elevated mercury levels in their blood that could impact future offspring.

This legislation will take that mercury which we are capturing from our power plants and allow utilities to spread it across the state in road beds and under parking lots. Those roads and parking lots will eventually crumble. Some will be rebuilt, others will be left for future generations to figure out how to repurpose. The placement of industrial byproducts at those sites will make their redevelopment more challenging and be a burden on local units of government. Fly ash from coal plants should be excluded from beneficial use 2.

**4) The bill fails to involve local units of governments or the public in the decision making process**

The Wisconsin program establishes a public participation process for any projects that is proposing to use more than 30,000 cubic feet of industrial byproducts. These provisions make sense based on the significant impact that could be caused by this much material and to here from those residents who live in the area and have the greatest chance to be directly impacted by the use of the byproducts.

For the reasons stated above, we urge the members to oppose HB 5400 as introduced. We are willing to work with bill sponsors to address our concerns.

Sincerely,



James Clift  
Policy Director

Contaminants	Max Contaminant Levels - Drinking water standard (MCL) (mg/L)	Leaching Levels Proposed Michigan (mg/L) - Use 2	Leaching Levels Proposed Wisconsin (mg/L) - Category 4	Factor by which MI exceeds drinking water standard	Factor by which WI standard exceeds drinking water
Arsenic	0.01	0.2	0.25	20	25
Boron	1.4	10	4.8	7.1	3.4
Cadmium	0.005	0.1	0.025	20	5
Chromium	0.1	2	0.5	20	5
Lead	0.015	0.08	0.075	5.3	5
Mercury	0.002	0.04	0.01	20	5
Copper	1.3	20	6.5	15.3	5
Nickel	0.1	2	0.5	20	5
Selenium	0.05	1	0.25	20	5
Thallium	0.002	0.04	0.01	20	5
Zinc	5	48	50	9.60	10

